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quate remedy at law by which to recover the amount illegally collected. *Arkansas Building & Loan Ass'n v. Madden*, 175 U. S. 269. See 1 VA. L. REV. 87. But taxes paid voluntarily are not recoverable, although erroneously assessed. *Kehe v. Blackhawk County*, 125 Ia. 549, 101 N. W. 281; *Gould v. Board of Commissioners*, 76 Minn. 379, 79 N. W. 303. And a payment is presumed voluntary until the contrary appears. *Yates v. Royal Ins. Co.*, 200 Ill. 202, 65 N. E. 726. It has been held that taxes paid before a threat of levy, or duress of any kind, are paid voluntarily and, though illegally levied, are not recoverable. *Railroad Co. v. Commissioners*, 98 U. S. 541; *Phelps v. City*, 112 N. Y. 216, 19 N. E. 408. And a payment of taxes in advance of the time that their collection may be enforced is likewise voluntary, and hence may not be recovered. See *Carton v. Board of Commissioners*, 10 Wyo. 416, 69 Pac. 1013.

If, however the payment is made under such circumstances as to render it involuntary, the illegal portion of the tax may be recovered in an action at law. *Swift & Co. v. United States*, 111 U. S. 22; *Atchison, etc., R. Co. v. O'Connor*, 223 U. S. 280, 28 Ann. Cas. 1050; *Ætna Ins. Co. v. Mayor*, 153 N. Y. 331, 47 N. E. 593. Thus, where illegal taxes are paid to prevent a sale of goods under a collector's warrant, the payment is involuntary and the illegal portion of the tax may be recovered. *Creamer v. Bremen*, 91 Me. 508, 40 Atl. 555; *Lindsay v. Allen*, 19 R. I. 721, 36 Atl. 840. And the payment of an illegal license tax under threats of arrest is likewise made involuntarily. *Magnolia v. Sherman*, 46 Ark. 358; *Chicago v. Klinkert*, 94 Ill. App. 524. Also, where an illegal tax is paid in order to prevent a factory from remaining idle, the payment is involuntary, and may be recovered. See *Atlas Powder Co. v. Goodloe* (Tenn.), 175 S. W. 547.

But, in order for the payment to be involuntary, it must be made under legal duress of person or goods. *Conkling v. City*, 132 Ill. 420, 24 N. E. 67. See *Phæbus v. Manhattan Club*, 105 Va. 144, 52 S. E. 839. The element of compulsion must be present. *Robins v. Latham*, 134 Mo. 466, 36 S. W. 33. Mere protest alone will not suffice, if the payment is not itself involuntary. *Raisler v. Mayor*, 66 Ala. 194; *Canfield, etc., Co. v. Manistee*, 100 Mich. 466, 59 N. W. 164. And it seems that where the payment is in fact made involuntarily, specific protest is not necessary. *Newberry v. Detroit* (Mich.), 150 N. W. 838.

**WILLS—ELECTIONS—ELECTION BY WEAK MINDED PERSON.**—The will of a testator made ample provision for his insane widow and for his daughters. Under the will the share of any daughter who died without issue was to devolve upon the survivors. One of the daughters had issue, while the others adopted children. In order to enable the adopted children to inherit, the guardian of the insane widow filed a petition in equity for leave to exercise the widow's statutory right of election to take against the will. *Held*, the petition is refused. *In re Bringham* (Pa.), 95 Atl. 320.

The statutory right of the widow to elect to take under the will of her husband, or to take against the will and under the law is a personal right. *Lewis v. Lewis*, 29 N. C. 72; *Camardella v. Schwartz*, 126 App. Div.

334, 110 N. Y. Supp. 611; *Pinkerton v. Sargent*, 102 Mass. 568. This right does not survive her death and is not transmissible by descent. *Crozier's Appeal*, 90 Pa. St. 384, 35 Am. Rep. 666. And may not be exercised, therefore, for the benefit of her heirs or creditors. *Williamson v. Nelson* (Tenn. Ch.), 62 S. W. 53; *Harding's Adm'r v. Harding's Ex'r*, 140 Ky. 277, 130 S. W. 1098; *Nordquist's Estate*, 114 Minn. 329, 131 N. W. 323. Nor be exercised by the widow herself, when insane. *Pinkerton v. Sargent*, *supra*; *Young v. Boardman*, 97 Mo. 181, 10 S. W. 48. Nor exercised in her behalf by the sole act of her guardian or committee, unless authority so to elect has been given by express statutory enactment; since the election of one of two things, when only one can be chosen, is a judicial and not a ministerial act. *Kennedy v. Johnston*, 65 Pa. St. 451, 3 Am. Rep. 650; *Van Steenwyck v. Washburn*, 59 Wis. 483, 17 N. W. 289, 48 Am. Rep. 532. An election may be made for an insane widow, however, by a court of equity having jurisdiction over the widow, or by her guardian or committee acting with the sanction of such a court. *Hardy v. Richards*, 98 Miss. 625, 54 South. 76, 35 L. R. A. (N. S.) 1210; *Trower v. Spady* (Va.), 83 S. E. 1049; *Orphans Home v. Seago*, 155 Ill. App. 76. And in some states the probate court is authorized by statute to make the election. See *Andrews v. Bassett*, 92 Mich. 449, 52 N. W. 743, 17 L. R. A. 296. In such cases, where the guardian or committee refuses to petition a court of equity to elect for the insane widow, the court will make the election in proceedings brought by next friend. *In re Conner's Estate*, 254 Mo. 65, 162 S. W. 252, 49 L. R. A. (N. S.) 1108.

In making the election the court is guided by considerations for the benefit of the widow without regard to what may be to the advantage of the heirs. *Penhallow v. Kimball*, 61 N. H. 596; see *Gaster v. Gaster*, 90 Neb. 529, 134 N. W. 235. It has been held, however, that the interests of the heirs may be taken into consideration also in making the election. *In re Stevens' Estate*, 163 Iowa 364, 144 N. W. 644. But where a petition is filed praying for leave to elect, and the avowed purpose of such election is not to benefit the widow, but is to divert away from the testator's grandchildren part of their inheritance, it should be refused.

WORKMEN'S COMPENSATION ACT—PERSONAL INJURY—ACCIDENT ARISING OUT OF THE EMPLOYMENT.—A foreman of a gang of laborers, after remonstrating with a Greek laborer as to his manner of work without avail ordered him to put down his shovel and cease work. The Greek refused and the foreman attempted to take the shovel from him, but was thrown down by the Greek, who with his teeth inflicted severe lacerations which were followed by blood poisoning, and thereby resulting in serious injuries to the foreman. *Held*, the foreman was injured by an accident "arising out of and in the course of the employment." *Western Indemnity Co. v. Pillsbury* (Cal.), 151 Pac. 398. See NOTES, p. 232.